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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,725	02/18/2004	Jean-Louis Gueret	118556	1716
25944	7590	12/20/2007		
OLIFF & BERRIDGE, PLC P.O. BOX 320850 ALEXANDRIA, VA 22320-4850			EXAMINER RUNNING, RACHEL A	
			ART UNIT 3732	PAPER NUMBER
			MAIL DATE 12/20/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/779,725

Applicant(s)

GUERET, JEAN-LOUIS

Examiner

Rachel A. Running

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 4, 6-32, 34-40 and 42 is/are pending in the application.
- 4a) Of the above claim(s) 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 6-27, 29-32, 34-40, 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 29, 2007 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 4, 6, 10-18, 20, 23, 25-27, 30, 34, 37-40, and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Stange (DE 296 14 364).

Stange discloses an applicator comprising a base portion (2) carrying an applicator element (4) capable of fixing onto a receptacle (see Figures 1 and 2); and a handle portion (3) rotatably mounted on the base portion to turn about a fixed axis of rotation, wherein the axis of rotation and the longitudinal axis of the handle portion are not mutually perpendicular (see Figures 2 and 3). The handle portion and the base portion cooperate in a manner to enable a user to secure the handle in at least two

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predefined application positions. The axis of rotation and the longitudinal axis are not parallel, and the axis of rotation and an axis of the base are never mutually perpendicular. The base portion and the handle portion co-operate to enable a user to secure the handle portion in at least two predefined position relative to the base (see Figures 2 and 3). The handle portion (12) and the base portion (11) co-operate to produce a click sound (see Figure 2). At least one of the base portion and the handle portion has a relief (5), which allows the base portion and the handle portion to provide a good grip (see Figure 1). The base portion includes a surface that is inclined relative to the axis of the base portion and the axis of rotation extends substantially orthogonally to the inclined surface (see Figure 2). At least one of the base portion and the handle portion includes a pin (9), which is engaged in a housing in the base portion (see Figure 2). The handle portion includes an insert (10) that enables the handle portion to be fixed onto the base portion by snap-fastening (see Figure 2). The applicator includes a stem having a first end which comprises a brush (4) and a second end (see Figure 2).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1, 3, 4, 7-18, 20, 23, 25-27, 30-32, 34-40, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vasas (US 6,237,609) in view of Stange.

Vasas discloses an applicator comprising a base portion carrying an applicator element (12) fixed onto a receptacle (10) and a handle portion (26) mounted on the base portion (see Figure 1; column 3, lines 45-55). The handle portion has a longitudinally axis. The base portion comprises a closure cap for the receptacle and the base portion is fixed onto the neck of the receptacle by screwing (see Figure 1; column 3, lines 59-65). The applicator comprises a brush (50) with a non-rectilinear core (see Figure 1; column 4, lines 30-33). The receptacle includes a wiper member (20) arranged to wipe the applicator element while the applicator is being removed (see Figure 1; column 3, lines 45-50). The applicator is configured for applying a product on at least one of the lips, eyelids, eyelashes, eyebrows, and hairs of the user.

Vasas does not disclose the handle portion rotatably mounted on the base portion to turn about a fixed axis of rotation, wherein the axis of rotation and the longitudinal axis of the handle portion are not mutually perpendicular. Stange teaches a base portion (2) carrying an applicator element (4) and a handle portion (3) rotably mounted on the base portion to turn about a fixed axis of rotation, wherein the axis of rotation and the longitudinal axis of the handle portion are not mutually perpendicular (see Figures 2 and 3). The axis of rotation and the longitudinal axis are not parallel, and the axis of rotation and an axis of the base are not mutually perpendicular. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the base and handle portion of Vasas with the handle portion rotatably

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mounted on the base portion to turn about a fixed axis of rotation wherein the axis of rotation and the longitudinal axis of the handle are not mutually perpendicular as taught by Stange to provide the user with an advanced ergonomic handle that allows the user to use multiple angles of tilt while applying a product.

6. Claims 7-9, 31, 32, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stange in view of Shay (US 397,028).

Stange discloses the claimed invention except for the base portion comprising a closure cap for a receptacle, the base portion being arranged to be fixed onto a neck of a receptacle by snap fitting, and the fixing means are leaktight.

Shay teaches the base portion of a shaving brush (4) comprising a closure cap for a receptacle (1). The base portion is arranged to be fixed to the receptacle by screwing and is leaktight (see Figure 2; column 2, lines 65-70). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the shaving brush of Stange to be fixed onto a receptacle as taught by Shay to provide the user with a shaving mug having a convenient means to suspend the brush when not in use.

7. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stange in view of Yamada (U.S. Patent No. 5,815,875).

Stange discloses the claimed invention except for the pin being a split pin. Yamada teaches a split pin which secures a handle to base (see Figure 4 and 5;

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column 2, lines 40-50). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the pin of Stange be a split pin as taught by Yamada in order to allow the pin to fit into the hollow of the base and then lock into place by expanding.

8. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stange.

Stange discloses the base portion including a pin arranged to be snap-fastened into the corresponding opening in the handle portion instead of the handle portion including a pin arranged to be snap-fastened into a corresponding opening in the base portion.

It would have been obvious to one having ordinary skill in the art at the time the invention was made have the handle portion include a pin arranged to be snap-fastened into a corresponding opening in the base portion, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

9. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stange in view of Riemann (U.S. Patent No. 4,922,575).

Stange discloses the claimed invention except for the handle portion including fins and a body to which the fins are attached.

Riemann teaches having fins (24b) on a handle portion (see Figure 9; column 1, lines 55-60). It would have been obvious to one of ordinary skill in the art at the time the

invention was made to make the handle portion of Stange with fins as taught by Riemann to provide the mechanical advantage of torque and improved gripping.

10. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stange in view of Kingsford (U.S. Patent No. 5,137,038).

Stange discloses the claimed invention except for the base portion and handle portion including at least one marker and the other base portion and handle portion including an index.

Kingsford teaches having a base portion with an index (6) and a handle portion with a marker (5) (see Figures 1 and 2; column 3, lines 10-15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the handle and base of Stange with an index and maker as taught by Kingsford in order to allow the user to move the handle and base to the next position by aligning the maker and index.

11. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stange in view of Samaras et al. (U.S. Patent No. 3,164,856).

Stange discloses the claimed invention except for the applicator element being removable from the base portion.

Samaras et al. teach an interchangeable applicator portion (see Figure 1; column 3, lines 1-10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the applicator portion of Stange be removable as

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taught by Samaras et al. in order to allow the user to interchange the brushes in order to allow a different user to use a different applicator.

Response to Arguments

12. Applicant's arguments filed October 29, 2007 have been fully considered but they are not persuasive.

13. In response to Applicant's argument that Strange is not configured to be fixed onto a receptacle as recited in claim 1, the intended use statement "configured for" is not given weight in an article claim. The applicator of Strange is capable of being fixed onto a receptacle. In order for the "configured for" language to be given patentable weight applicant must positively recite a fastening means, otherwise the claim is interpreted as the rim is capable of being fixed to a receptacle by being set into a receptacle such as a cup.

14. In response to Applicant's argument that Stange does not teach a second application position, Stange discloses multiple positions for the handle and nothing is preventing the user from applying the product using any one of those positions. Even though Stange discloses that the perpendicular position is used for drying, a reference is not limited to its preferred embodiment all of the disclosure in a reference must be evaluated for what they fairly teach one of ordinary skill in the art. In re Boe, 148 USPQ 507 (CCPA 1966).

15. In response to Applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by

combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the rationale for combining Vasas in view of Stange is to teach a known method or technique to yield predictable results, such as a more ergonomical handle. *KSR International Co. v. Teleflex Inc.*, 550 U.S., 82 USPQ2d 1385 (2007).

Conclusion

16. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel A. Running whose telephone number is (571) 272-1917. The examiner can normally be reached on Monday-Friday 7:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


ROBYN DOAN
PRIMARY EXAMINER

Rachel A. Running
Examiner
Art Unit 3732
